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**APPEAL BRIEF**

Applicant	:	Martin, et al.
App. No	:	10/763,012
Filed	:	January 22, 2004
For	:	SYSTEMS AND METHODS FOR COLLABORATIVE PROGRAMMING OF SIMULATIONS OF COMPUTER PROGRAMS
Examiner	:	Chuck O. Kendall
Art Unit	:	2192

**Mail Stop Appeal Brief-Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the *Notice of Appeal* filed April 21, 2008, Applicants submit this Appeal Brief.

**TABLE OF CONTENTS**

Real Party in Interest.....	2
Related Appeals and Interferences.....	2
Status of Claims.....	2
Status of Amendments.....	2
Summary of Claimed Subject Matter .....	3
Grounds of Rejection to be Reviewed on Appeal.....	6
Argument .....	7
Claims Appendix .....	12
Evidence Appendix .....	19
Related Proceedings Appendix .....	20

Docket No. : IRL001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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Customer No.: 20,995

#### **I. REAL PARTY IN INTEREST**

The real party of interest in the present application is iRise.

#### **II. RELATED APPEALS AND INTERFERENCES**

Pursuant to 37 C.F.R. § 41.37(c)(2), Appellants hereby notify the Board of Patent Appeals that U.S. Patent Application No. 10/484,541 filed on January 26, 2002, which is the National Phase of prior PCT application PCT/US02/23816, which is currently under appeal, may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Appellants, the Appellants Legal Representative, and the Assignee do not know of any other appeals or interferences that will directly affect or be directly affected by or have any bearing on the Board's decision in the pending appeal.

#### **III. STATUS OF CLAIMS**

Claims 1-52 are currently pending in the application, and are attached hereto as an appendix. All of the pending claims were finally rejected by the Examiner and are the subject of this appeal.

#### **IV. STATUS OF AMENDMENTS**

Claims 1-52 are currently pending and rejected. No claims have been amended subsequent to the Final Office Action.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to computer software, and more particularly, to the cooperative programming of a simulation program of a computer application to be developed. Each independent claim is summarized below, with citations to corresponding portions of the specification and drawings as required by 37 C.F.R. § 41.37(c)(1)(v). These citations are provided in order to illustrate specific examples and embodiments of the recited claim language, and are not intended to limit the claims.

Independent Claim 1 is directed to a method of cooperatively programming a simulation program of a computer application to be developed. The method includes communicating with a plurality of user computers (see, *e.g.*, 80, Figure 2, paragraph [0097]). These user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) an executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) of the computer application to be developed. Simultaneously, the user computers (see, *e.g.*, 80) can modify (see, *e.g.*, 62, 82, Figures 1-2, [0029], [0100]) the executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]), thereby revising (see, *e.g.*, 108, 112, Figure 3 [0112]-[0114]) the simulation program of the computer application to be developed. A modification (see, *e.g.*, 82, Figure 2, [0100]) to the executable simulation model (see, *e.g.*, 86, Figure 2, [0101]) is received (see, *e.g.*, 106, 110, 118, 108, 120, 112, Figure 3, [0111]-[0115]) from a first user computer (see, *e.g.*, 80) of the user computers (see, *e.g.*, 80). Updates (see, *e.g.*, 122, 114, Figure 3, [0114]) are provided to the user computers (see, *e.g.*, 80) so that the user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) the revised executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]).

Independent Claim 14 is directed to a computer system permit users to cooperatively program a simulation program of a computer application to be developed. A first component communicates with a plurality of user computers (see, *e.g.*, 80, Figure 2, [0097]). The user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) an executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) of the simulation program of the computer application to be developed. A second component permits the user computers (see, *e.g.*, 80) to simultaneously modify (see, *e.g.*, 62, 82 Figures 1-2, [0029], [0100]) the executable simulation

model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) thereby revising (see, *e.g.*, 108, 112, Figure 3, [0112]-[0114]) the simulation program of the computer application to be developed. The second component receives (see, *e.g.*, 106, 110, 118, 108, 120, 112, Figure 3, [0111]-[0115]) a modification (see, *e.g.*, 82, Figure 2, [0100]) to the executable simulation model (see, *e.g.*, 86, Figure 2, [0101]) from a first user computer selected from the user computers (see, *e.g.*, 80). A third component automatically provides an update (see, *e.g.*, 122, 114, Figure 3, [0114]) to the plurality of user computers such that the plurality of user computers (see, *e.g.*, 80) display (see, *e.g.*, 64) the revised executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]).

Independent Claim 27 is directed to a computer system that permits users to cooperatively program a simulation program of a computer application to be developed. The computer system includes a means for communicating with a plurality of user computers (see, *e.g.*, 80, Figure 2, paragraph [0097]). These user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) an executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) of the simulation program of the computer application to be developed. The computer system includes a means for permitting the user computers (see, *e.g.*, 80) to simultaneously modify (see, *e.g.*, 62, 82, Figures 1-2, [0029], [0100]) the executable simulation model (see, *e.g.*, 86, Figure 2, [0101]) thereby revising the simulation program of the computer application to be developed. The computer system includes a means for receiving (see, *e.g.*, 106, 110, 118, 108, 120, 112, Figure 3, [0111]-[0115]) a modification (see, *e.g.*, 82, Figure 2, [0100]) to the executable simulation model from a first user computer (see, *e.g.*, 80) selected from the user computers. The computer system includes a means for automatically providing an update (see, *e.g.*, 122, 114, Figure 3, [0114]) to the plurality of user computers (see, *e.g.*, 80) such that the plurality of user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) the revised executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]).

Independent Claim 40 is directed to a computer program embodied in a computer-readable medium for cooperatively programming of a simulation program of a computer application to be developed. The computer program includes instructions that communicate with a plurality of user computers (see, *e.g.*, 80, Figure 2, paragraph [0097]). The user computers (see, *e.g.*, 80)

display (see, *e.g.*, 64, Figure 2, [0099]) an executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) of the simulation program of the computer application to be developed. The computer program includes instructions that permit the user computers (see, *e.g.*, 80) to simultaneously modify (see, *e.g.*, 62, 82, Figures 1-2, [0029], [0100]) the executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]) thereby revising (see, *e.g.*, 108, 112, Figure 3 [0112]-[0114]) the simulation program of the computer application to be developed. The computer program includes instructions that receive (see, *e.g.*, 106, 110, 118, 108, 120, 112, Figure 3, [0111]-[0115]) a modification (see, *e.g.*, 82, Figure 2, [0100]) to the executable simulation model (see, *e.g.*, 86, Figure 2, [0101]) from a first user computer (see, *e.g.*, 80) selected from the user computers (see, *e.g.*, 80). The computer program includes instructions that automatically provide an update (see, *e.g.*, 122, 114, Figure 3, [0114]) to the plurality of user computers (see, *e.g.*, 80) such that the plurality of user computers (see, *e.g.*, 80) display (see, *e.g.*, 64, Figure 2, [0099]) the revised executable simulation model (see, *e.g.*, 78, 86, Figure 2, [0097], [0101]).

Docket No. : IRI.001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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**Customer No.: 20,995**

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The sole ground for rejection to be reviewed on appeal is the rejection of independent Claims 1, 14, 27, and 40 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,944,584 to Tenney, et al ("Tenney") in view of U.S. Patent No. 7,194,489 by Bentley, et al. ("Bentley").

## VII. ARGUMENT

For the reasons set forth below, Appellants respectfully submit that the rejection of Claims 1, 14, 27, and 40 under 35 U.S.C. § 103(a) is improper.

In order “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In addition, “[w]hen the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious,” *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1395 (2007).

### Discussion of the Tenney Reference

Tenney teaches developing *deployable* software with a software simulation of *hardware*. Tenney teaches “simulated testing of the robotic software before the robotic hardware has been fully developed,” (Col. 1, lines 36-38). Tenney states that “the combined client/server system may be fully tested offline in pure simulation mode before being connected to the actual system hardware,” (Col. 8, lines 6-8). Tenney states that “[t]he software development track 843, however, begins by *simulating hardware devices*, and gradually integrating the application hardware as it becomes available,” (Col. 10, lines 43-45) (emphasis added). Tenney describes the benefit as that “[a]fter the device control program has been fully tested in simulation, *the same program* can be used to control actual devices,” (Col. 2, lines 38-40) (emphasis added). For example, the simulation “warns developers of potential collisions that will occur before control software is used with the actual hardware devices during development and simulation of new robotic workcells,” (Col. 9, lines 46-46). Tenney is not related to a simulation program of a computer application to be developed.

Also, the Examiner acknowledges that “Tenney doesn’t expressly disclose permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed.” (Final Office Action, Page 3, lines 5-7).

### **Inadequate Basis for Combining Tenney and Bentley**

As acknowledged by the Examiner, Tenney “Tenney doesn’t expressly disclose permitting the user computers to simultaneously modify the executable simulation model.” The Examiner uses Bentley to provide the missing elements. Appellants submit that it is improper to combine Tenney and Bentley in the manner proposed by the Examiner. The Examiner states that “it would have been obvious ... to combine Tenney and Bentley because it would enable being able to remotely edit the program as disclosed by Bentley above.” Appellants submit that Tenney teaches away from a combination with Bentley.

“When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious,” *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1395 (2007).

Tenney states that “[t]he server security system also prevents multiple users from simultaneously accessing critical control areas of the server software.” (Col. 8, lines 55-57). Accordingly, Tenney teaches away from a configuration providing multiple users with simultaneous access and thus, Tenney and Bentley should not be combined.

### **Claim Interpretation Must be Reasonable**

Even if Tenney and Bentley were to be combined, there is no substantial evidence in Tenney to support the Examiner’s contention that “Tenney discloses an inventive control and simulation development to write simulation programs for controlling devices,” (Advisory Action, lines 2-3 of page 2). In formulating the rejections of Claims 1, 14, 27, and 40, the Examiner acknowledges ignoring certain limitations.

While Appellants acknowledge that the Examiner is permitted to interpret claim language broadly, such interpretation must nonetheless still be reasonable. “The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (citing *In re Am. Acad. of Sci. Tech.*



*Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). See also, *In re Buszard*, 504 F.3d 1364 (Fed. Cir. 2007).

In the Advisory Action, the Examiner explained that the “Applicants claim limitation does not preclude or exclude the intended use...” Thus, Appellants conclude that the claim language regarding “simulation program of the computer application to be developed” has been ignored, and Appellants disagree with the interpretation.

If, for example, Tenney’s system were to incorporate Appellants’ invention, then there would be a third item, a simulation program for the software under development (the simulation program itself in Tenney is a hardware simulator and not the program that is under development). Accordingly, the claim language does not merely recite a statement of intended use. Assuming arguendo, Appellants note that a use limitation is proper in a method claim, such as Claim 1, and thus, cannot be ignored by the Examiner in interpreting Claim 1.

Accordingly, the Examiner’s claim construction, which reads out the element “simulation program of the computer application to be developed” from “communicating with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed” and “permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed,” as recited in Claim 1; “a first component configured to communicate with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed,” and “a second component configured to permit the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed, where the second component is further configured to receive a modification to the executable simulation model from a first user computer selected from the user computers,” as recited in Claim 14; and “a means for communicating with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed,” and “a means for permitting the user computers to simultaneously modify the

Docket No. : IRI.001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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Customer No.: 20,995

executable simulation model thereby revising the simulation program of the computer application to be developed,” from Claim 27, must be reversed.

Tenney does not teach or suggest a simulation program of a computer application to be developed, but rather, Tenney teaches “the same program” (Col. 2, lines 39-40), a combination of Tenney and Bentley does not teach or suggest all claim limitations. Rather than simulate a program, but Tenney is concerned with “simulating hardware devices,” (Col. 10, line 44). When given its broadest reasonable interpretation, the claim language: “permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed,” does not read on the development of deployable software using a simulation of hardware. In addition, Appellants note that Bentley also does not teach or suggest a simulation program of a computer application. The only instance of “simulation” in Bentley is in connection with “making electronic engineering simulations more powerful and reliable,” (Col. 1, lines 63-64) which is also descriptive of hardware simulation.

In order “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Accordingly, the Examiner’s rejection must be reversed.

Docket No. : IRI.001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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Customer No.: 20,995

**Conclusion**

For the reasons set forth above, Appellants respectfully submit that the rejections of Claims 1, 14, 27, and 40 are improper, and request that these rejections be reversed.



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Michael S. Okamoto  
Registration No. 47,831  
Attorney of Record  
Customer No. 20,995  
(310) 551-3450

### VIII. CLAIMS APPENDIX

1. A method of cooperatively programming a simulation program of a computer application to be developed, the method comprising:

communicating with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed;

permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed;

receiving a modification to the executable simulation model from a first user computer selected from the user computers; and

automatically providing an update to the plurality of user computers such that the plurality of user computers display the revised executable simulation model.

2. The method as defined in Claim 1, wherein the modification to the executable simulation model further comprises at least one of adding a primitive, deleting a primitive, editing a primitive, or modifying a relationship between or among primitives.

3. The method as defined in Claim 1, further comprising automatically providing the update in near real time.

4. The method as defined in Claim 1, wherein automatically providing an update occurs without having a user of the first user computer activate an instruction to update the executable simulation model.

5. The method as defined in Claim 1, wherein automatically providing an update further comprises automatically updating a second user computer without receiving a request from the second user computer to update the executable simulation model.

6. The method as defined in Claim 1, further comprising dynamically sharing requirements among the user computers.

7. The method as defined in Claim 1, further comprising dynamically sharing requirements among the user computers, wherein the dynamically-shared requirements are stored in a single data store.

8. The method as defined in Claim 1, wherein the executable model includes requirements.

9. The method as defined in Claim 1, further comprising dynamically sharing primitives among the user computers.

10. The method as defined in Claim 1, further comprising dynamically sharing primitives among the user computers, wherein the dynamically-shared primitives are stored in a single data store.

11. The method as defined in Claim 1, further comprising:

communicating with a second user computer, where the second user computer is executing the model of the simulation program; and

automatically providing the update to the second user computer such that the second user computer automatically executes the revised executable model of the simulation program.

12. The method as defined in Claim 11, wherein automatically providing the update to the second user computer occurs in near real time.

13. The method as defined in Claim 1, wherein the computer application is a Web-based application.

14. A computer system that is configured to permit users to cooperatively program a simulation program of a computer application to be developed, the computer system comprising:

a first component configured to communicate with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed;

a second component configured to permit the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed, where the second component is further configured

to receive a modification to the executable simulation model from a first user computer selected from the user computers; and

a third component configured to automatically provide an update to the plurality of user computers such that the plurality of user computers display the revised executable simulation model.

15. The computer system as defined in Claim 14, wherein the modification to the executable simulation model further comprises at least one of adding a primitive, deleting a primitive, editing a primitive, or modifying a relationship between or among primitives.

16. The computer system as defined in Claim 14, wherein the third component is further configured to automatically provide the update in near real time.

17. The computer system as defined in Claim 14, wherein the third component is further configured to automatically provide an update without having a user of the first user computer activate an instruction to update the executable simulation model.

18. The computer system as defined in Claim 14, wherein the third component is further configured to automatically update a second user computer without receiving a request from the second user computer to update the executable simulation model.

19. The computer system as defined in Claim 14, further comprising a component configured to dynamically share requirements among the user computers.

20. The computer system as defined in Claim 14, further comprising a component configured to dynamically share requirements among the user computers, wherein the dynamically-shared requirements are stored in a single data store.

21. The computer system as defined in Claim 14, wherein the executable model includes requirements.

22. The computer system as defined in Claim 14, further comprising a component configured to dynamically share primitives among the user computers.

23. The computer system as defined in Claim 14, further comprising a component configured to dynamically share primitives among the user computers, wherein the dynamically-shared primitives are stored in a single data store.

24. The computer system as defined in Claim 14, wherein:

the first component is further configured to communicate with a second user computer that is executing the model of the simulation program; and

the third component is further configured to automatically provide the update to the second user computer such that the second user computer automatically executes the revised executable model of the simulation program.

25. The computer system as defined in Claim 24, wherein the third component is further configured to automatically provide the update to the second user computer in near real time.

26. The computer system as defined in Claim 14, wherein the computer application is a Web-based application.

27. A computer system that is configured to permit users to cooperatively program a simulation program of a computer application to be developed, the computer system comprising:

a means for communicating with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed;

a means for permitting the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed;

a means for receiving a modification to the executable simulation model from a first user computer selected from the user computers; and

a means for automatically providing an update to the plurality of user computers such that the plurality of user computers display the revised executable simulation model.

28. The computer system as defined in Claim 27, wherein the modification to the executable simulation model further comprises at least one of adding a primitive, deleting a primitive, editing a primitive, or modifying a relationship between or among primitives.

29. The computer system as defined in Claim 27, further comprising a means for automatically providing the update in near real time.

30. The computer system as defined in Claim 27, wherein the means for automatically providing an update is further configured to provide the update without having a user of the first user computer activate an instruction to update the executable simulation model.

31. The computer system as defined in Claim 27, wherein the means for automatically providing an update is further configured to automatically update a second user computer without receiving a request from the second user computer to update the executable simulation model.

32. The computer system as defined in Claim 27, further comprising a means for dynamically sharing requirements among the user computers.

33. The computer system as defined in Claim 27, further comprising a means for dynamically sharing requirements among the user computers, wherein the dynamically-shared requirements are stored in a single data store.

34. The computer system as defined in Claim 27, wherein the executable model includes requirements.

35. The computer system as defined in Claim 27, further comprising a means for dynamically sharing primitives among the user computers.

36. The computer system as defined in Claim 27, further comprising a means for dynamically sharing primitives among the user computers, wherein the dynamically-shared primitives are stored in a single data store.

37. The computer system as defined in Claim 27, further comprising:

a means for communicating with a second user computer, where the second user computer is executing the model of the simulation program; and

a means for automatically providing the update to the second user computer such that the second user computer automatically executes the revised executable model of the simulation program.

38. The computer system as defined in Claim 37, wherein automatically providing the update to the second user computer occurs in near real time.

39. The computer system as defined in Claim 27, wherein the computer application is a Web-based application.



40. A computer program embodied in a computer-readable medium for cooperatively programming of a simulation program of a computer application to be developed, the computer program comprising:

instructions configured to communicate with a plurality of user computers, where the user computers display an executable simulation model of the simulation program of the computer application to be developed;

instructions configured to permit the user computers to simultaneously modify the executable simulation model thereby revising the simulation program of the computer application to be developed;

instructions configured to receive a modification to the executable simulation model from a first user computer selected from the user computers; and

instructions configured to automatically provide an update to the plurality of user computers such that the plurality of user computers display the revised executable simulation model.

41. The computer program as defined in Claim 40, wherein the modification to the executable simulation model further comprises at least one of adding a primitive, deleting a primitive, editing a primitive, or modifying a relationship between or among primitives.

42. The computer program as defined in Claim 40, further comprising instructions configured to automatically provide the update in near real time.

43. The computer program as defined in Claim 40, wherein the instructions configured to automatically provide an update are further configured to provide the update without having a user of the first user computer activate an instruction to update the executable simulation model.

44. The computer program as defined in Claim 40, wherein the instructions configured to automatically provide an update are further configured to automatically update a second user computer without receiving a request from the second user computer to update the executable simulation model.

45. The computer program as defined in Claim 40, further comprising instructions configured to dynamically share requirements among the user computers.

46. The computer program as defined in Claim 40, further comprising instructions configured to dynamically share requirements among the user computers, wherein the dynamically-shared requirements are stored in a single data store.

47. The computer program as defined in Claim 40, wherein the executable model includes requirements.

48. The computer program as defined in Claim 31, further comprising instructions configured to dynamically share primitives among the user computers.

49. The computer program as defined in Claim 40, further comprising instructions configured to dynamically share primitives among the user computers, wherein the dynamically-shared primitives are stored in a single data store.

50. The computer program as defined in Claim 40, further comprising:

instructions configured to communicate with a second user computer that is executing the model of the simulation program; and

instructions configured to automatically provide the update to the second user computer such that the second user computer automatically executes the revised executable model of the simulation program.

51. The computer program as defined in Claim 50, wherein the instructions configured to automatically provide the update to the second user computer are further configured to provide the update to the second user computer in near real time.

52. The computer program as defined in Claim 40, wherein the computer application is a Web-based application.

Docket No. : IRL001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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**Customer No.: 20,995**

**IX. EVIDENCE APPENDIX**

None.

Docket No. : IRI.001C1  
Application No. : 10/763,012  
Filing Date : January 22, 2004

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**Customer No.: 20,995**

**X. RELATED PROCEEDINGS APPENDIX**

None. There are no decisions rendered by a court or by the Board in the related case.

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